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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,210	01/20/2006	Benjamin Elias	22409-00312-US	9182
30678 7590 10/14/2009 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006			EXAMINER PHAM, EMILY P	
			ART UNIT 2838	PAPER NUMBER
			MAIL DATE 10/14/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,210	Applicant(s) ELIAS ET AL.	
	Examiner Emily Pham	Art Unit 2838	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15, 17, 19-25, 30-33, and 39-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12, 14, 20, 21, 23-25, 31-33, 39, 40, 47, 48 and 53-55 is/are rejected.
- 7) ☒ Claim(s) 13, 15, 17, 19, 22, 30, 41-46, 49-52, and 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/24/2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings were received on 8/24/2009. These drawings are acceptable.

Specification

3. The abstract of the disclosure is objected to because abstract does not concisely states the technical disclosure of the application which is new in the art to which the invention pertains. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an

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application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 39, 40, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Munshi et al (USP 5,411,537).

Regarding independent claim 39: Munshi et al (**FIG 2**) discloses a battery charger for a rechargeable battery (**rechargeable lithium battery**) of an electronic device, the battery charger comprising:
a charge controller (**88**) configured to charge the rechargeable battery during a first cycle (**line 1 of col. 7 – line 68 of col. 10**); and a measuring circuit (**90**) configured to measure one or more parametric data (**90**) during the first cycle, and calculate an offset error of the measuring circuit while no load (**open circuit**) is placed on the rechargeable battery (**rechargeable lithium battery**) (**line 43 of col. 11 – line 30 of col. 12**).

Regarding claim 31: Munshi et al (**FIG 2**) discloses parametric data includes a cumulative amount of charge delivered to the rechargeable battery (**rechargeable lithium battery**) during the first cycle.

Regarding claim 40: Munshi et al (**FIG 2**) discloses an auxiliary power source (**68**) configured to power the electronic device independently of the rechargeable battery (**rechargeable lithium battery**), and configured to power the measuring circuit (**90**) independently of the rechargeable battery (**rechargeable lithium battery**).

6. Claims 12, 14, 20, 47, 48, and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Meadows et al (USP 6,553,263).

Regarding independent claim 12: Meadows et al (**FIG 3; Detailed Description of the Invention**) discloses a system for operating a rechargeable battery, said system comprising:

means **(182)** for charging said rechargeable battery to a predetermined maximum voltage **(line 53 of col. 20 – line 14 of col. 21)**;

means **(160)** for determining a first dynamic charging range **(line 53 of col. 20 – line 14 of col. 21)** for the rechargeable battery for a first dynamic charging range for a first plurality of charging cycles; and

means **(166, 168)** for calculating an offset error for said determining means while there is no more than a relatively low load on the rechargeable battery **(277) (lines 40-47 of col. 21; low load when battery is discharged below a second prescribed limit; calculation and determination for trickle charge)**.

Regarding independent claim 47: Meadows et al (**FIG 9**) discloses a battery charger **(208)** for a rechargeable battery of an electronic device, the battery charger **(208)** comprising:

a charge controller **(696)** configured to charge the rechargeable battery during a first cycle; and a measuring circuit **(698)** configured to measure one or more parametric data **(charge/discharge current)** during the first cycle, and calculate an offset error of the measuring circuit while no more than a relatively low load is placed on the rechargeable battery **(277) (lines 40-47 of col. 21; low load when battery is discharged below a second prescribed limit; calculation and determination for trickle charge)**.

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Regarding claim 14: Meadows et al (**FIG 9**) discloses determining means comprises means for integrating **(689)** a current signal proportional to an amount of current delivered to said rechargeable battery.

Regarding claim 20: Meadows et al (**FIG 9**) discloses predetermined maximum voltage may be dynamically adjusted based on parameters of said rechargeable battery **(277) (current pulses are adjustable in convenient increments)**.

Regarding claim 48: Meadows et al (**FIG 9**) discloses an auxiliary power source **(AC Power)** configured to power the electronic device independently of the rechargeable battery **(277)**, and configured to power the measuring circuit **(698)** independently of the rechargeable battery **(277)**.

Regarding claim 55: Meadows et al (**FIG 9**) discloses parametric data includes a cumulative amount of charge delivered to the rechargeable battery **(277)** during the first cycle **(current pulses are adjustable in convenient increments)**.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meadows et al (USP 6,553,263).

Regarding claim 21: Meadows et al discloses the claimed invention except for predetermined maximum voltage being less than 57.6 volts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to operate the battery at predetermined maximum voltage being less than 57.6 volts, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 23-25: Meadows et al discloses the claimed invention except for said rechargeable battery is used for an implantable medical device which is a receiver/stimulator unit of totally implantable prosthetic hearing implant. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

9. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munshi et al (USP 5,411,537) in view of Single (USP 6,922,591).

Munshi et al discloses the claimed invention except for said electronic device is an implantable medical device which is a receiver/stimulator unit of prosthetic hearing implant system.

Single (**whole document**) teaches that the use of an implantable medical device which is a receiver/stimulator unit of prosthetic hearing implant system using battery is well known in the art.

Since Munshi et al and Single are both from the same field of endeavor, the purpose disclosed by Single would have been recognized in the pertinent art of Munshi et al. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made use the prosthetic hearing implant system with the battery of Munshi et al, as taught by Single for the purpose of providing reliable and safe power source to the implantable medical device (**Single, line 27-35 of col. 4**).

10. Claims 53-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meadows et al (USP 6,553,263) in view of Single (USP 6,922,591).

Meadows et al discloses the claimed invention except for said electronic device is an implantable medical device which is a receiver/stimulator unit of prosthetic hearing implant system.

Single (**whole document**) teaches that the use of an implantable medical device which is a receiver/stimulator unit of prosthetic hearing implant system using battery is well known in the art.

Since Meadows et al and Single are both from the same field of endeavor, the purpose disclosed by Single would have been recognized in the pertinent art of Meadows et al. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made use the prosthetic hearing implant system with the battery of Meadows et al, as taught by Single for

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the purpose of providing reliable and safe power source to the implantable medical device (**Single, line 27-35 of col. 4**).

Allowable Subject Matter

11. Claims 13,15, 17, 19, 22, 30, 40-46, and 49-51, and 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claims 12, 39, and 47 have been considered but are moot in view of the new ground(s) of rejection.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emily Pham whose telephone number is (571)270-3046. The examiner can normally be reached on Mon-Thu (7:00AM - 6:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Lewis can be reached on (571) 272 - 1838. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jessica Han/
Primary Examiner, Art Unit 2838

EP